GEORGE F. JACKSON

IBLA 2003-39 Decided March 19, 2003

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting an Alaska Native Veteran allotment application. AA-83560.

Affirmed.

1. Alaska: Native Allotments

> The Alaska Native Veterans Allotment Act, 43 U.S.C. 1629g (2000 Supp.), permits Alaska Natives who were veterans who served in the U.S. military under prescribed circumstances between January 1, 1969, and December 31, 1971, an open season in which to apply for a Native allotment under the Act of May 17, 1906, the Alaska Native Allotment Act, formerly codified at 43 U.S.C. §§ 270-1 through 270-3 (1970). BLM properly rejects a Native allotment application where the appellant's military service concluded in 1965.

APPEARANCES: Carol Yeatman, Esq., Alaska Legal Services Corporation, Anchorage, Alaska, for the appellant; Lisa D. Doehl, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

George F. Jackson appeals from a September 23, 2002, decision issued by the Alaska State Office, Bureau of Land Management, rejecting his Alaska Native Veteran allotment application. The decision rejected the application on three grounds: (1) that portions of the land Jackson had applied for had previously been conveyed to the State of Alaska; (2) that all remaining lands applied for had been reserved as part of the Tongass National Forest at the time Jackson alleged he began to use and occupy the land; and (3) that, in order to qualify for an allotment under the Alaska Native Veterans Allotment Act, an applicant's dates of military service had to have included

6 months between 1969 and 1971, and Jackson's service dates ended in 1965.

Jackson submitted a Statement of Reasons (SOR) on November 25, 2002. In his SOR, Jackson argues that BLM's conclusions regarding the availability of the lands he applied for were in error. (SOR at 4-19.) In addition, Jackson asserts that BLM's application of the relevant statutory provision within the Alaska Native Veterans Allotment Act, while correct, nonetheless must be reversed by the Board because the statute itself violates the equal protection clause of the U.S. Constitution. (SOR at 19-25.) Conceding that under the relevant statutory provision, 43 U.S.C. § 1629g(1)(B) (2000 Supp.), Jackson would be "ineligible because his military service occurred before January 1, 1969," (SOR at 20), Jackson asks the Board to declare the statutory language unconstitutional.

On December 23, 2002, the Office of the Solicitor filed BLM's Answer to the SOR and a Motion to Dismiss, stating, inter alia, that the latter issue is dispositive of this appeal. On December 30, 2002, the Office of the Solicitor submitted a Notice of Supplemental Authority, notifying the Board of a recent order involving the same legal issue under the Veterans Allotment Act. Gilbert Dementi, Sr., IBLA 2003-9 (Dec. 17, 2002). In that order, the Board affirmed BLM's decision with respect to Dementi and rejected Dementi's argument that the statute was unconstitutional.

[1] The qualifying statutory provision was enacted as part of the "Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1999," Pub. L. No. 105-276, 112 Stat. 2461, 2516-18 (Oct. 21, 1998). Section 432 of that Act amended the Alaska Native Claims Settlement Act, 43 U.S.C. §§1601-1629 (1994), by adding a new section 41. Section 41 permitted a "person described in subsection (b)" an "Open Season for Certain Alaska Native Veterans for Allotments," during an 18-month period subsequent to its 1998 date of enactment. 1/ During that time, a qualifying person would be, under specific circumstances, "eligible for an allotment of * * * federal land totaling 160 acres or less under the Act of May 17, 1906 (chapter 2469; 34 Stat. 197), as such Act was in effect before December 18, 1971." 2/

1/ The statute provides that such applications may be filed during the 18 months "following promulgation of implementing rules." 43 U.S.C. § 1629g(a)(1) (2000 Supp.).

2/ This statute is the Alaska Native Allotment Act, formerly codified at 43 U.S.C. §§ 270-1 through 270-3 (1970)), repealed by sec. 18(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617(a) (1994). The repeal of this statute meant that all applications for Native allotments had to be filed on or prior to Dec. 18, 1971.

Section 41(b) identified the persons eligible to select an allotment under the

new provision. The statute restricted this opportunity to veterans who served between January 1, 1969, and December 31, 1971. 43 U.S.C. § 1629g(b)(1)(B) (2000 Supp.). The veteran's military service dates must have included "at least 6 months between January 1, 1969 and June 2, 1971," or the veteran must have enlisted or been drafted into military service after June 2, 1971, but before December 3, 1971. Id.; see also 43 CFR 2568.50.

By this statute, Congress extended an opportunity to select and obtain Native allotments only to veterans who were serving in the military for at least 6 months during the last two years of eligibility, or who had been drafted or enlisted during the statutory time period in 1971. The statute thus reopened the application period to those persons who had military service during the last two years during which applications could be filed under the Native Allotment Act and may have missed the opportunity to timely apply for that reason.

The record shows that Jackson's military service fell between May 14, 1963, and May 15, 1965. Jackson does not dispute these dates of service, nor does he allege that military service between these dates impeded his ability to apply for an allotment during the last two years of the pendency of the Alaska Native Allotment Act, as it was in effect prior to December 18, 1971. Instead, he argues that section 41(b) of the Alaska Native Veterans Allotment Act is unconstitutional because it denies equal protection to Alaska Native veterans who served in the military during the Vietnam era but not during the statutory qualifying period between January 1, 1969, and December 31, 1971.

This Board has no authority to reconsider the terms or qualifying conditions set forth in the Alaska Native Veterans Allotment Act. The Board's authority derives from the executive branch; it does not coincide with that of the judiciary. Mack Energy Corporation, 153 IBLA 277, 290 (2000). Thus, the Board has no authority to declare an Act of Congress unconstitutional. If a such a legislative enactment is in conflict with the U.S. Constitution, it is for the judicial branch to so declare. Amerada Hess Corp., 128 IBLA 94, 98 (1993); citing Ptarmigan Co., 91 IBLA 113 (1986), aff'd sub nom., Bolt v. United States, No. A87-106 (D. Alaska Mar. 30, 1990), aff'd, 944 F.2d 603 (9th Cir. 1991).

Jackson is not eligible to select a Native allotment under the plain terms of section 41(b) of the Alaska Native Veterans Allotment Act. 43 U.S.C. § 1629g (2000 Supp.). Accordingly, even if the Board were to consider the remaining arguments raised by Jackson, our only conclusion would be to affirm the decision.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed.

_____
Lisa Hemmer
Administrative Judge

I concur:

_____
R. W. Mullen
Administrative Judge